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Street Address:
590 S. Marine Corps Drive
Suite 312 ITC Building
Tamuning, GU 96913

Mailing Address:
P.O. Box 2950
Hagåtña, GU 96932

Website:
<http://dlim.guam.gov>

E-mail Address:
admin@galc.guam.gov

Telephone:
(671) 649-LAND (5263)
ext. 681

Facsimile:
671-649-5383



LOURDES A. LEON GUERRERO
Maga'haga

JOSHUA F. TENORIO
Sigundo Maga'lahi

KUMISION I TANO' SAINA-TA
(Guahan Ancestral Lands Commission)



JOHN T. BURCH
Executive Director

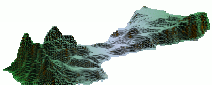
GALC SPECIAL BOARD MEETING AGENDA

Wednesday, February 22, 2023 at 2:30 PM

Open to the Public via ZOOM and Live Streaming on YouTube

Public Notice was published in *The Guam Daily Post* on
Wednesday, February 15, 2023 and Monday, February 20, 2023

- I. CALL TO ORDER**
- II. ROLL CALL**
- III. PENDING LITIGATIONS – LEGAL COUNSEL UPDATES**
- IV. ADJOURNMENT**





GUAM ANCESTRAL LANDS COMMISSION



Lourdes A. Leon Guerrero
Maga'haga
Governor

Joshua F. Tenorio
Sigundo Maga'lahi
Lieutenant Governor

John T. Burch
Executive Director

In compliance with Public Law 24-109,

Guam Ancestral Lands Commission

Published the

Public Meeting Announcement

For

Wednesday, February 22, 2023

in

***The Guam Daily Post on Wednesday, February 15, 2023, and
Monday, February 20, 2023***

Attached are photo copies of the published GALC Meeting Notices



We are seeking a Qualified Individual to fill the following position:

PROJECTS ENGINEER

Candidate will be responsible for Management of SPPC's Cabras Distribution Terminal's Facility Maintenance, Repair and Construction ensuring Safety, Health, and Environmental Compliance. Responsibilities shall include, but is not limited to:

- Supervision of Preventative, Routine, and Repair Maintenance.
- Supervision of third-party contractors and service providers and enforcing Safe Operations and Responsibilities (SOAR) compliance.
- Performing cost analyses, seek bids, select contractors/vendors for capital and expense projects.
- Leading implementation of SOAR systems and action items.
- Administering SPPC Contracts, Purchase Orders, and Work Orders.
- Supervision of immediate reports and performing annual performance appraisals.

A Qualified Individual should possess a Bachelor's Degree in Engineering and project engineering experience. Previous oil industry experience is strongly preferred.

Must be able to obtain a T.W.I.C. card.

Please submit resume and complete an application packet between 9 AM thru 3 PM, Monday through Friday at our main office EVA Bldg. 1 across from St. John's School in Upper Tumon. Deadline for application submission is February 28th, 2023.

South Pacific Petroleum Corporation
816 N Marine Corps Dr. FL 2
Tamuning Guam 96913-4431
ATTN: HRO Recruitment

SPPC IS AN EQUAL OPPORTUNITY EMPLOYER

Komision Lant' Sa'guita' Guam Ancestral Lands Commission

The Guam Ancestral Lands Commission Special Board Meeting will be held on Wednesday, February 22, 2023 at 1:30 pm. This meeting is open to the public via ZOOM and can be viewed live stream on YouTube.

JOIN ZOOM MEETING

<https://us22.zoom.us/j/8706936269> Meeting ID: 870 693 6269 Password: 2023

AGENDA

Call to Order; Roll Call; Pending Litigations - Legal Counsel Updates; Adjournment

TO VIEW LIVE STREAMING

https://www.youtube.com/channel/UCVim3d11H14_wb5VH1g

Details and links to this meeting are also available on the Guam Public Notices Portal at <http://nle.guam.gov>. Individuals requiring special accommodations, auxiliary aids or services, may call G.A.L.C. Administration Office at 671-473-6263 or email admin@gal.guam.gov for more information.

This ad is paid for by G.A.L.C. Survey, Infrastructure & Development Funds.



GUAM MEMORIAL HOSPITAL AUTHORITY ATURIDĀT ESPETĀT MIMURIĀT GUĀHĀN



Board of Trustees Meeting

Date: Wednesday February 22, 2023

Time: 5:00 p.m.

Meeting will take place via Zoom Video Conferencing.

Meeting ID: 913 5266 3119

Passcode: 556240

Agenda: I. Call to Order; II. Approval of the Minutes: A. January 26, 2023 Regular Board Meeting; III. Old Business; IV. New Business; VI. Guam Memorial Hospital Volunteers Association Report; VII. Board Subcommittee Reports: A. Joint Conference and Professional Support: 1. Res. 2023-25, Relative to the Reappointment of Active Medical Staff Privileges, 2. Res. 2023-26, Relative to the Reappointment of Active Medical Staff Privileges, 3. Res. 2023-27, Relative to the Appointment of Provisional Medical Staff Privileges; B. Human Resources: 1. Res. 2023-28, Relative to Implementing the Job Differential Pay for Nurses in the Pediatric Intensive Care Unit (PICU) and the Neonatal Intensive Care Unit (NICU); C. Finance and Audit: 1. Fiscal Division Realignment and Updates to Organizational Chart; D. Facilities, CIP and IT; E. Quality and Safety; F. Governance, Bylaws, and Strategic Planning.

For special accommodations, please contact Theo Pangelinan, EEO Officer, at (671)647-2104, Monday through Friday from 8:00 a.m. to 5:00 p.m.

/s/ Lillian Perez-Posadas, MN, RN
Hospital Administrator/CEO

This advertisement was paid for with government funds.

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VEHICLES FOR SEALED BID SALE

2017 Buick Regal 2020 Mitsubishi Outlander

At this time, bid applications are scheduled by appointment and on weekdays only. To schedule an appointment or for more information, contact Credit Solutions Services at (671) 477-0124. All sealed bid applications must be submitted no later than 5:00P.M. Feb. 17, 2023. We reserve the right to refuse any and all bids.

Federally insured by NCUA.

Tokio Marine Pacific Foundation, Inc.

PO Box 326367

Hagatna, Guam 96932

Statement of Financial Position

As of December 31, 2022

ASSETS	5,139
Cash in Bank	-
Investment	5,139
Total Assets	5,139
LIABILITIES	-
Accounts Payable	-
Total Liabilities	-
NET ASSETS	-
Unrestricted	-
Designated	5,139
Undesignated	5,139
Total Net Assets	5,139
Total Liabilities and Net Assets	5,139

Statement of Activities Year Ended December 31, 2022

Revenues	5,000
Expenses	3,654
Change in Net Assets	1,346
Net Assets Beginning	3,793
Net Assets Ending	5,139

Guam Memorial Funeral Home, Inc Position Opening for:

Funeral Director and Warehouse Team Member (No Experience necessary will train)

Flexible Hours/Must Lift 25 to 50lb.
Must have a Valid Guam Driver's License
And must be able to work on Saturdays

Collector (Part-Time) Must have own transporation (Base Pay, Gas Allowance and Bonuses)

Apply at Guam Memorial Funeral Home
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or email resume to: agnes@guammemorialpark.com
NO PHONE CALLS PLEASE

William C. Bischoff
121 Calvo Beach Rd.
Ipan, Talofofo, Guam 96915
Tel. 789-2556 Cell 486-2557
e-mail: bischoffbill2@yahoo.com

January 9, 2023

GALC Director Burch,

Attached hereto are excerpts from several court filings, with parts underlined that I think are particularly relevant to the recent Commission discussions about the Torres Estate cases. The Commissioners may be interested in reviewing these, and asking any questions about them or any other filings at the January 11, 2023 meeting, or whenever else the Commission may discuss the Torres Estate cases again. These are:

1. Guam Supreme Court Opinion 2015 Guam 8, dated March 27 2015, pages 1, 6, 16, 17, 25, 29. **Pages 1-9.**
2. Gaum Superior Court D&O by Judge Sukola in CV1235, dated June 26, 2013, pages 1, 2, 5-6. **Pages 10-13.**
3. AG Motion in CV1093-06 to add GALC as Third Party Defendant, pages 1-3, and the proposed Third Party Complaint paragraph; signed by me. **Pages 14-17.**
4. Torres Estate lawyers' memorandum filed in Guam District Court on October 25, 2006, signed by attorney Razzano, pages 1, 9, 10, 12. **Pages 18-21.**
5. Guam Superior Court D&O by Judge Lamorena in CV1093-06, dated October 19, 2019, Pages 1-8. **Pages 22-29.**
6. GRANT DEED, signed November 4, 2002. **Pages 30-33.**
7. Guam Superior Court D&O by Judge Barcinas in CV1124-09 dated June 27, 2012, pages 1, 21, 26. **Pages 34-36.**
8. Guam Superior Court D&O by Judge Barcinas in CV1124-09 dated September 30, 2013, pages 1, 13, 15. **Pages 37-39.**
9. Torres Estate lawyers Motion for Settlement Conference in CV0454-12, dated November 30, 2015, pages 1-2, signed by attorney Razzano. **Pages 40-41.**
10. AG Office response to my September 6, 2022 FOIA request, containing the SETTLEMENT AND MUTUAL RELEASE, pages 1, 9, 10, 12; and Dismissals filed in Guam Supreme and Superior Courts. **Pages 42-50.**
11. Torres Litigation Inquiry Query response from Deputy AG Canto to Nick Toft, **Pages 51-51.**

Thank you.

Sincerely,

William C. Bischoff

FILED

2015 MAR 27 PM 12:54

**SUPREME COURT
OF GUAM**

IN THE SUPREME COURT OF GUAM

**GOVERNMENT OF GUAM,
Plaintiff-Appellee/Cross-Appellant,**

v.

**GERALDINE T. GUTIERREZ, in her capacity as Administratrix of the
ESTATE OF JOSE MARTINEZ TORRES and the ESTATE OF JOSE
MARTINEZ TORRES,
Defendants-Appellants/Cross-Appellees.**

Supreme Court Case No.: CVA14-007

Superior Court Case No.: CV1124-09

OPINION

Cite as: 2015 Guam 8

Appeal from the Superior Court of Guam
Argued and submitted on September 29, 2014
Hagåtña, Guam

For Defendants-Appellants/Cross-Appellees:

F. Randall Cunliffe, *Esq.*
Cunliffe & Cook, P.C.
210 Archbishop Flores St., Ste. 200
Hagåtña, GU 96910

Joseph C. Razzano, *Esq.*
Joshua D. Walsh, *Esq.*
Civille & Tang, PLLC
330 Hernan Cortez Ave., Ste. 200
Hagåtña, GU 96910

For Plaintiff-Appellee/Cross-Appellant:

David J. Highsmith, *Esq.*
Assistant Attorney General
Office of the Attorney General
Civil Division
590 S. Marine Corps Dr., Ste. 706
Tamuning, GU 96913

The Commission . . . directs the Chairperson and Secretary of the Commission to condition the return of the properties to the Estate that the Estate shall request the probate court of the Jose M. Torres Estate to accept the return of the properties in exchange for the Estate terminating all future claims

RA tab 134, Ex. I at 4 (Final Written Dec. & Order, Dec. 26, 2006).

[6] On June 7, 2007, the Estate petitioned the Probate Court “to Compromise and to Confirm Quitclaim Deed and Real Property Received by the Estate [t]hrough the Ancestral Lands Commission.” RA, tab 89, Ex. 2 at 1 (Pet. Compromise, June 12, 2007). The petition was approved by the probate court on August 31, 2007. The GALC thereafter filed a “Satisfaction and Release of Condition Placed on Deed” on September 26, 2007. RA, tab 66, Ex. A at 1 (Satisfaction & Release, Sept. 26, 2007). This release quotes the condition in the quitclaim deed, and declares it to be satisfied. The deed was signed on October 17, 2006.

[7] The Government, acting on behalf of the GALC,² filed a “Complaint for Reformation of Deed, for Declaratory Judgment, to Quiet Title, and for Imposition of a Constructive Trust” on July 24, 2009. RA, tab 2, at 1 (Compl. Reformation of Deed, July 24, 2009).³

[8] The court issued a preliminary injunction on February 10, 2009, “to enjoin [the Estate] from distributing the assets contained within the Estate” RA, tab 45 at 1 (Order, Feb. 10, 2010). The court stated that the injunction would be in effect “for ten (10) days from the date of this order.” *Id.* at 3. The court held a hearing for a motion for a permanent injunction on February 22, 2010. It continued the injunction until a hearing on March 31, 2010. The Estate filed for dissolution of the injunction on March 18, 2011. The court ruled that the original

² It appears that the Government’s representation of GALC was in dispute at one point. However, this is not an issue on appeal, and no party now contends that the Government is not the proper representative of the GALC.

³ The Government attempted to intervene in the Estate’s probate court case in 2008, but the court denied the Government’s petition.

Appellant's Reply Br. at 25-26. However, determination of that question is unnecessary in this case.

[24] Regardless of whether the doctrine of estoppel by deed is limited to after-acquired title, it is established that the doctrine does not apply where a claim of invalidity exists. *Gordon v. City of San Diego*, 36 P. 18 (Cal. 1894) ("It is essential to an estoppel by deed that the deed itself should be a valid instrument . . .");⁵ see also *Dominex, Inc. v. Key*, 456 So. 2d 1047, 1057 (Ala. 1984); *Perkins v. Kerby*, 308 So. 2d 914, 917 (Miss. 1975); 31 C.J.S. *Estoppel and Waiver* § 56 (2014). Likewise, the doctrine does not apply where a deed has been procured through fraud or is the product of mistake. See *Vai v. Bank of Am. Nat'l Trust & Sav. Ass'n*, 364 P.2d 247, 256 (Cal. 1961) (en banc); see also *San Juan Basin Consortium, Ltd. v. EnerVest San Juan Acquisition Ltd. P'ship*, 67 F. Supp. 2d 1213, 1226 (D. Colo. 1999); *Levatino v. Levatino*, 506 So. 2d 858, 862 (La. Ct. App. 1987); *Kolker v. Gorn*, 67 A.2d 258, 261 (Md. 1949); 31 C.J.S. *Estoppel and Waiver* § 57 (2014). Here, the Government has asserted both fraud and mistake in its first cause of action and has alleged that the deed is invalid in its second cause of action. RA, tab 89 at 2-8 (Third Am. Compl., Aug. 30, 2010). Until these claims are resolved, the doctrine of estoppel by deed cannot apply in this case. Accordingly, the Government is not estopped from arguing that the deed is invalid, or from requesting reformation on the basis of mistake.

D. Whether the Trial Court Erred in Granting Summary Judgment in Favor of the Government Based on its Claim for Reformation

[25] Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as

⁵ This court finds California case law to be persuasive in determining matters of estoppel by deed. See *Taitano*, 2005 Guam 26 ¶¶ 36 n.10, 44.

to any material fact.” *Gayle v. Hemlani*, 2000 Guam 25 ¶ 20 (quoting Guam R. Civ. P. 56(c)); see also *Bank of Guam v. Flores*, 2004 Guam 25 ¶ 8. A genuine issue exists where there is “sufficient evidence” which establishes a factual dispute requiring resolution by a fact-finder. *Gayle*, 2000 Guam 25 ¶ 20 (citing *Iizuka Corp. v. Kawasho Int’l, Inc.*, 1997 Guam 10 ¶ 7 (citation omitted)). However, the dispute must involve a “material fact.” *Id.* “A ‘material’ fact is one that is relevant to an element of a claim or defense and whose existence might affect the outcome of the suit . . . Disputes over irrelevant or unnecessary facts will not preclude a grant of summary judgment.” *Id.* (omission in original).

[26] In motions for summary judgment, a court must view the evidence and draw inferences in the light most favorable to the non-movant. *Id.* ¶ 21. If, however, there are no genuine issues of material fact, the non-movant may not simply rely on allegations in the complaint, but must provide some significant probative evidence supporting the complaint. *Id.* (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986)).

1. Unilateral mistake

[27] The Estate contends that the trial court erred in granting summary judgment in favor of the Government. Appellant’s Br. at 22. The court held that the Government was entitled to reformation based upon unilateral mistake. RA, tab 219 at 10-13 (Dec. & Order, Sept. 30, 2013).

In making this determination, the court reasoned that the Estate’s attorney “knew or should have known” that submission to the probate court did not properly satisfy the intended condition. *Id.* at 13. However, this conclusion is not drawn from the appropriate standard for determining whether reformation is warranted. Unilateral mistake may, in some cases, justify rescission of a contract where the other party knew or should have known of the mistake. See 18 GCA § 89202

(2005) ("A party to a contract may rescind the same . . . [i]f the consent of the party rescinding, or of any party jointly contracting with him, was given by mistake."); *see also Mendiola v. Bell*, 2009 Guam 15 ¶ 32 n.5 ("Guam statutory law . . . recognizes a right of rescission for fraud [or] for mistake" (internal quotation marks omitted)); *ArcelorMittal Cleveland, Inc. v. Jewell Coke Co.*, 750 F. Supp. 2d 839, 848 (N.D. Ohio 2010) (applying Restatement (Second) of Contracts § 153). However:

It has been pointed out that the difference between reformation and rescission of a written contract on account of a mistake of one of the parties is very distinct, for the reformation of a contract involves an effort to enforce it as reformed, whereas rescission involves an effort to abandon and recede from a contract which the party did not intend to make. One of the parties to a contract cannot have it reformed on account of mistake which is not mutual, for to do so would be to enforce the reformed contract which the other party had not intended to make.

Annotation, *Unilateral Mistake as Basis of Bill in Equity to Rescind the Contract*, 59 A.L.R. 809 (originally published in 1929).

[28] In light of these differences in remedy, "[a] unilateral mistake alone is not an adequate ground for reformation." *M Electric Corp. v. Phil-Gets (Guam) Int'l Trading Corp.*, 2012 Guam 23 ¶ 26; *see also ArcelorMittal*, 750 F. Supp. 2d at 848 ("Generally, a court will not reform a contract in the case of a unilateral mistake"); *Kopff v. Econ. Radiator Serv.*, 838 S.W.2d 449, 452 (Mo. Ct. App. 1992). Instead, only a "unilateral mistake accompanied by fraud or misrepresentation by the other party will warrant reformation." *M Electric Corp.*, 2012 Guam 23 ¶ 26. This requirement of wrongdoing by the party opposing reformation mirrors similar limitations articulated in other jurisdictions. *See, e.g., John John, LLC v. Exit 63 Dev., LLC*, 826 N.Y.S.2d 656, 657 (N.Y. App. Div. 2006) ("To reform a contract based on mistake, a plaintiff must establish that the contract was executed under mutual mistake or a unilateral mistake

induced by the defendant's fraudulent misrepresentation." (citation and internal quotation marks omitted)); *Poly Trucking, Inc. v. Concentra Health Servs., Inc.*, 93 P.3d 561, 563 (Colo. App. 2004) ("Reformation is generally permitted when . . . one party made a unilateral mistake and the other engaged in fraud or inequitable conduct." (citations omitted)); *Faivre v. DEX Corp. Ne.*, 913 N.E.2d 1029, 1036 (Ohio. Ct. App. 2009) ("[W]here the mistake occurred due to a drafting error by one party and the other party knew of the error and took advantage of it, the trial court may reform the contract." (citation omitted)); *Kish v. Kustura*, 79 P.3d 337, 339 (Or. Ct. App. 2003) ("To obtain reformation of a contract, a party must prove . . . that there was a mutual mistake or a unilateral mistake on the part of the party seeking reformation and inequitable conduct on the part of the other party" (citation and internal quotation marks omitted)).

[29] "The elements of fraud include: 1) a misrepresentation; 2) knowledge of falsity (or scienter); 3) intent to defraud to induce reliance; 4) justifiable reliance; 5) resulting damages. The absence of any of these required elements will preclude recovery." *Wilkinson v. Jones*, 2004 Guam 14 ¶ 18 (quoting *Trans Pac. Exp. Co. v. Oka Towers Corp.*, 2000 Guam 3 ¶ 23). Here, the trial court did not make a finding that the Estate intentionally misrepresented the terms of the contract for the purpose of misleading the GALC. Rather, the court merely opined that "[t]he distinction between a 'probate court' and a court of general jurisdiction, competent to adjudicate the validity of the Defendants' ancestral claim . . . was clear to the Defendants' attorneys, or should have been so in the exercise of reasonable diligence." RA, tab 219 at 11 (Dec. & Order). As discussed above, this conclusion alone is insufficient for a grant of summary judgment under the reformation standard for unilateral mistake. The trial court's decision in this case makes no reference to evidence that the error was intentionally included for the purpose of

misleading the GALC or that the commissioners reasonably relied on such representation. *Id.* at 9-12. Thus, reformation was improper.

2. Dispute of material fact

[30] In addition to evaluating summary judgment under an improper standard, the trial court also erred in concluding that no dispute of material fact remained. "Summary judgment is generally proper in a contract dispute only if the language of the contract is wholly unambiguous." *Compagnie Financiere de CIC et de L'Union Europeenne v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, 232 F.3d 153, 157-58 (2d Cir. 2000) (citations omitted). Further, if parties assert conflicting intentions about the meaning of the same contract language, then disputes of material fact remain and preclude summary judgment. *Atalla v. Abdul-Baki*, 976 F.2d 189, 195 (4th Cir. 1992). If a contract's terms remain ambiguous, summary judgment may be granted only "if the evidence presented about the parties' intended meaning [is] so one-sided that no reasonable person could decide the contrary." *Compagnie Financiere*, 232 F.3d at 158 (citing *3Com Corp. v. Banco do Brasil, S.A.*, 171 F.3d 739, 746-47 (2d Cir. 1999)). This presumption against summary judgment has been applied specifically to claims of unilateral mistake relating to the substance of a contract. See, e.g., *Bethlehem Steel Corp. v. Centex Homes Corp.*, 327 So. 2d 837, 838-39 (Fla. Dist. Ct. App. 1976).

[31] In this case, the Estate has presented multiple pieces of evidence regarding the intended meaning of the contract and whether a unilateral mistake occurred at all. For example, in a deposition provided by the Estate, Commissioner Mark Charfauros stated that some commissioners had concerns about the deed that were resolved, and that they were involved in the drafting of the deed. RA, tab 218, Ex. D at 5-8 (Mark Charfauros Dep., June 17, 2008). He

prong. Appellant's Br. at 30-31. The Government has not provided any argument to contradict this assertion. See Appellee's Br. at 25.

[37] "A determination of irreparable harm typically focuses on categories of harm that do not easily lend themselves to monetary compensation." *Sule v. Guam Bd. of Exam'rs for Dentistry*, 2011 Guam 5 ¶ 12. Irreparable harm exists where "pecuniary compensation would not afford adequate relief or [where] it would be extremely difficult to ascertain the amount that would afford adequate relief." *Id.* (quoting *DVD Copy Control Ass'n, v. Kaleidescape, Inc.*, 97 Cal. Rptr. 3d 856, 876 (Ct. App. 2009)). In *Kaleidescape*, the California court found no irreparable harm where the moving party "failed to prove that pecuniary compensation would be inadequate or extremely difficult to calculate." 97 Cal. Rptr. 3d at 877.

[38] The Government contends that the injunction is necessary to "protect the funds" acquired through the land sale from disbursement by the Estate. Appellee's Br. at 25. However, the Estate has affirmed that it possesses "tens of millions of dollars' [sic] worth of assets" from which potential compensation could be collected. Appellant's Br. at 31. In this case the remedy for the quiet title action—the proceeds from the sale of the Property—is extremely easy to calculate. There is also no reason to conclude that monetary damages in an amount equaling the proceeds would be inadequate.

[39] Because of the general practice of not granting injunctions relating to monetary relief and because the Government made no showing that the Estate would have insufficient funds to cover any recovery by the Government in the absence of an injunction, the trial court erred in finding irreparable harm.

of *Concepcion*, 2003 Guam 12 ¶ 35 (“Although the handling of this case in the probate court and on appeal . . . may be questioned, the issues presented show that the appeal was not frivolous.”). Therefore, it was not an abuse of discretion for the trial court to decline to impose sanctions upon the Government.

V. CONCLUSION

[48] In light of the facts and arguments presented, we reverse the trial court’s grant of summary judgment on the reformation claim and remand. Additionally, we reverse the trial court’s continuance of the injunction. However, we affirm that the trial court did not abuse its discretion in declining to grant the Estate’s motion for sanctions.

[49] On the Government’s cross-appeal, we reverse the dismissal of the Government’s claims for quiet title, declaratory judgment, and constructive trust, and remand for further proceedings. Further, we decline to rule on the *ultra vires* challenge presented for failure to seek initial disposition in the trial court.

[50] Accordingly, we REVERSE in part, AFFIRM in part, and REMAND for proceedings not inconsistent with this opinion.

Original Signed by: David A. Wiseman

Signed by:

DAVID A. WISEMAN

Justice Pro Tempore

Original Signed By: J. Bradley Klemm

J. BRADLEY KLEMM

Justice Pro Tempore

Original Signed By: Katherine A. Maraman

KATHERINE A. MARAMAN

Presiding Justice

COMPILER of LAWS

IN THE SUPERIOR COURT OF GUAM

GOVERNMENT OF GUAM,
Plaintiff,
v.

HELENE TORRES and EVELYN
O'KEEFE, in their capacities as CO-
ADMINISTRATRIXES OF THE ESTATE
OF JOSE MARTINEZ TORRES, AND THE
ESTATE OF JOSE MARTINEZ TORRES,
Defendants.

Criminal Case No. CV1235-12

**DECISION AND ORDER: Defendants'
Motion to Dismiss Plaintiff's Complaint to
Quiet Title and Declaratory Judgment**

INTRODUCTION

This matter came before the Honorable Anita A. Sukola on April 4, 2013, for a hearing on Defendants' Motion to Dismiss Plaintiff's Complaint to Quiet Title and Declaratory Judgment. Assistant Attorney General William C. Bischoff represented the Plaintiff, Government of Guam (hereinafter, "Government"). Defendant Helene Torres was represented by Attorney F. Randall Cunliffe. Defendant Evelyn O'Keefe and the Estate of Jose Martinez Torres (hereinafter, "Estate") were represented by Attorney Joseph C. Razzano. Following the hearing, the Court took the matter under advisement. Upon review of the evidence, written arguments, and legal authorities presented by both parties, the Court hereby issues this Decision and Order DENYING Defendants' Motion.

BACKGROUND

The Government filed its Complaint to Quiet Title and for Declaratory Judgment on October 31, 2012, alleging two causes of action. Under the first cause of action, the Government is seeking judgment quieting title in three parcels of land in Dededo, Guam: Lots

10

1 5007-1, 5008, and 5008-1 ("Lots"). Under the second cause of action, the Government is
2 seeking a declaratory judgment that the deeds recorded to the Guam Ancestral Land
3 Commission ("Commission"), as well as the subsequent conveyance of the Lots to the Estate,
4 are *ultra vires*, unlawful and void.

5 The Government alleges that the Lots are not "Ancestral Lands" as defined in the
6 Ancestral Lands Act, 21 GCA § 80101, and that the Lots were not privately owned by residents
7 of Guam on or after January 1, 1930, nor were the Lots taken from any private owner by the
8 Federal Government on or after January 1, 1930 in land condemnation proceedings. Compl. at 2
9 (Oct. 31, 2012). The Government further states that, notwithstanding the fact that the Lots were
10 not "Ancestral Lands," the Lots were nevertheless deeded, *ultra vires*, to the Commission
11 pursuant to a deed signed by then-Governor Carl T.C. Gutierrez and then-Acting Attorney
12 General Robert H. Kono. *Id.* at 3. Furthermore, the deeding of the Lots to the Commission was
13 done without Legislative approval as required under 21 GCA §60112. *Id.* In 2004, the Lots were
14 conveyed by the Commission to the Estate.

15 For the aforementioned reasons, it is the Government's position that no one has a valid
16 Ancestral Land claim to the Lots and that the transfer of the Lots to the Commission, as well as
17 the subsequent transfer of the Lots to the Estate, were done *ultra vires* and that title should be
18 quieted in favor of the Government. The Government further requests that the deeds of the Lots
19 to the Commission, as well as the subsequent deeds to the Estate by the Commission, be
20 declared *ultra vires* and void.

21 On December 5, 2012, Defendant Torres filed her Motion to Dismiss Plaintiff's
22 Complaint pursuant to Rule 12(b)(7) and Rule 19 of the Guam Rules of Civil Procedure for
23 failure to join required persons as parties. Defendant Torres also filed her Memorandum of Law
24

possession of the Lots and the case would be dismissed. Therefore, complete relief can be accorded among present parties without the joinder of the absentees.

B. Analysis Under Rule 19(a)(2)(i)

Under Rule 19(a)(2)(i), an absentee must be joined if their absence would impede their ability to protect whatever interest they may have in the pending action. *Benavente*, 2006 Guam 15 ¶ 62. The Court must first determine what the absentee's interest is in the pending litigation, if any. *Id.* The Court must then determine whether a judgment would impair or impede the absentee's ability to protect that interest. *Id.*

In the instant case, the Office of the Governor would not have an interest in the Lots. The Governor at the time of the conveyance to the Commission, as well as the Acting Attorney General at the time of the conveyance have since left office, and although these individuals may be witnesses to the transactions at issue, this Court is in agreement with the Government that these individuals have no personal interest in this case. As for the Commission, although it may have a remote interest in the Lots given that it could potentially be the party with title after litigation, it is this Court's position that the Commission lacks the statutory authority to sue or be sued on its own behalf. The absence of such authority is made clear in Chapter 80 of Title 21 of the Guam Code Annotated.

Although the Commission itself cannot be joined as a party in the instant case, because it is an agency of the Government of Guam, its interest may be represented by the Attorney General on behalf of the Government of Guam pursuant to 5 GCA § 30109. Since the Government is already the Plaintiff in the instant case, the Commission's interest in the Lots is adequately represented by the Attorney General. Assuming, arguendo, that this Court were to

12

1 find that the Office of the Governor does, in fact, have a valid interest in this matter, its interest
2 would also be represented by the Attorney General on behalf of the Government of Guam.

3 **C. Analysis Under Rule 19(a)(2)(ii)**

4 Lastly, Under Rule 19(a)(2)(ii), a Court must determine whether joinder is necessary to
5 avoid harm to current parties in the litigation, such as "substantial risk of incurring double,
6 multiple, or otherwise inconsistent obligations..." *Benavente*, 2006 Guam 15 ¶ 75. It is the
7 opinion of this Court that the risk of the Defendants in this matter incurring double, multiple, or
8 inconsistent obligations would not be reduced as a result of joinder of the Office of the
9 Governor and the Commission. This is due to the fact that, as stated previously, the Office of
10 the Governor and the Commission, if found to have any interest in the Lots, already have their
11 interests represented by the Plaintiff Government. In the unlikely event that other parties who
12 may have an interest in the matter decide to file a claim against the Defendants after the instant
13 case is adjudicated, their claim would be precluded under the doctrine of res judicata. For the
14 aforementioned reasons, it is the opinion of this Court that joinder of other parties will not be
15 necessary to avoid harm to the current parties in the litigation.
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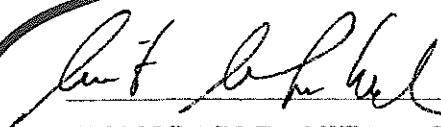
19 **CONCLUSION**

20 Based on the foregoing reasons, the Court DENIES Defendants' Motion to Dismiss.

21 Further Proceedings is scheduled for AUGUST 20, 2013 at 9 a.m.

22 SO ORDERED this 26 day of JUNE, 2013.

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HONORABLE ANITA A. SUKOLA
Judge, Superior Court of Guam



Office of the Attorney General
Alicia G. Limtiaco
Attorney General of Guam
Civil Division
287 West O'Brien Drive
Hagåtña, Guam 96910 • USA
(671) 475-3324 • (671) 472-2493 (Fax)
www.guamattorneygeneral.com

Attorneys for the People of Guam

**IN THE SUPERIOR COURT OF GUAM
HAGÁTÑA, GUAM**

THE ESTATE OF JOSE MARTINEZ
TORRES,

Plaintiff,

vs.

THE GOVERNMENT OF GUAM and
GOODWIND DEVELOPMENT
CORPORATION,

Defendants.

CIVIL CASE NO. CV1093-06

**MOTION TO AMEND ANSWER TO
ASSERT THIRD PARTY
COMPLAINT**

Pursuant to GRCP 19(a), the Government of Guam moves to amend its answer, in the form attached, to add the Ancestral Lands Commission ("ALC") as a third party defendant. The government has filed a counterclaim to quiet title to the lot in question, and the ALC appears to be a necessary party to that.

Investigation of the background to this case indicates that lot at issue, Lot 5007, Dededo, was deeded by the Government of Guam to the ALC in November of 2002. The ALC thereafter, in 2004, deeded the lot to the Martinez Torres estate.

Page 1

Motion to join ALC as Third Party Defendant
Superior Court Case No. CV1093-06

FILED
SUPERIOR COURT
OF GUAM

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CLERK OF COURT

BY:

ORIGINAL

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1 But the Naval Government was issued a certificate of title to the lot in 1928 (copy
2 attached). The ALC only has jurisdiction over lands that were privately owned after 1930.

3 Any right that the plaintiff estate could claim to the lot was extinguished well before 1930.

4 "Ancestral Lands" is defined in the Ancestral Lands Act (21 GCA §80101(a)), as
5 "those lands owned privately by residents of Guam on or after January 1, 1930."

6 The Naval Government never conveyed the lot to anyone until 1950, when it conveyed
7 the lot to the government of Guam.

8 It thus appears that the ALC should never have taken jurisdiction over the lot in
9 question. To the extent that the ALC does in fact have a deed to the lot from the government,
10 the ALC should be joined as a third party defendant herein, so that that deed may be cancelled,
11 and title to the lot quieted in the government.

12 Rule 19(a) of the Guam Rules of Civil Procedure provides as follows:
13

14 (a) Persons to be Joined if Feasible. A person who is subject to service of
15 process and whose joinder will not deprive the court of jurisdiction over the
16 subject matter of the action shall be joined as a party in the action if (1) in the
17 person's absence complete relief cannot be accorded among those already
18 parties, or (2) the person claims an interest relating to the subject of the action
19 and is so situated that the disposition of the action in the person's absence may
20 (i) as a practical matter impair or impede the person's ability to protect that
21 interest or (ii) leave any of the persons already parties subject to substantial risk
22 of incurring double, multiple, or otherwise inconsistent obligations by reason of
23 the claimed interest. . .
24
25


1 The complete relief standard of Rule 19(a)(1) is designed to insure that all persons who
2 have interest in litigation are present so that any relief to be awarded will effectively and
3 completely adjudicate a dispute. *Smith v Mandel*, 66 FRD 405 (D.C. 1975). Rule 19(a)(2)
4 provides that non-parties should be joined in action when a decree might be detrimental to them,
5 but the Rule does not require court to join all persons whose interests might conceivably be
6 affected by decision in case. *American Civil Liberties Union v Board of Public Works*, 357 F.
7 Supp. 877 (D.Md. 1972).

8 The need to have the Ancestral Lands Commission as a party to the current litigation
9 appears justified under Rule 19 of the Guam Rules of Civil Procedure. The adjudication of the
10 quiet title counterclaim by the Government of Guam cannot be resolved without the participation
11 of the Ancestral Lands Commission.

12
13 Dated this 26 day of December, 2007.

14
15 OFFICE OF THE ATTORNEY GENERAL
16 Alicia G. Limtiaco, Attorney General

17 By


18 WILLIAM C. BISCHOFF
19 Assistant Attorney General
20 Attorney for Government of Guam
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THIRD PARTY COMPLAINT

1. The Government of Guam respectfully incorporates by this reference all of the preceding paragraphs of this pleading and alleges as follows: The Guam Ancestral Lands Commission ("ALC") was improperly deeded the lot in question by the Government of Guam in November of 2002. It was beyond the jurisdiction of the ALC to obtain title to the lot, since the lot had been government land since before 1930 and was not "ancestral lands" as defined in the statute that created the ALC and limited its jurisdiction. The deed by which the government of Guam conveyed the lot to the ALC should be cancelled, and title to the lot quieted in the government.

PRAYER

For all the reasons set forth above, Government prays that:

1. Plaintiff takes nothing from its Complaint with prejudice.
2. The Court quiet title to the Government's interest in that portion of Lot No. 5007 within that certain public access and utility easement created by that certain map entitled "Real Estate Requirement Severance Right of Way within Tract 100, Parcel 1A-1" recorded at the Department of Land Management under Instrument No. 414341.
3. Any other and further such relief as the Court deems just and proper.
4. The Court declare the respective rights and duties of the parties in this matter and in particular, if the Court determines that Plaintiff's property which it received by virtue of that certain Quitclaim Deed from the Guam Ancestral Lands Commission is not subject to the Guam Ancestral Lands Act, then the court must determine the validity and authority for the

1 **TEKER TORRES & TEKER, P.C.**
2 SUITE 2A, 130 ASPINALL AVENUE
3 HAGATNA, GUAM 96910
4 TELEPHONE: (671) 477-9891-4
5 FACSIMILE: (671) 472-2601

6 *Attorneys for Plaintiff*
7 *The Estate of Jose Martinez Torres*

BRONZE & TANG, P.C.	
Date:	10.25.06
Time:	2:26 PM
Received by:	[Signature]

FILED
DISTRICT COURT OF GUAM

OCT 25 2006

MARY L.M. MORAN
CLERK OF COURT

8
9 IN THE DISTRICT COURT OF GUAM

10
11 THE ESTATE OF
12 JOSE MARTINEZ TORRES,

Plaintiff,

13 vs.

14 THE GOVERNMENT OF GUAM and
15 GOODWIND DEVELOPMENT
16 CORPORATION,

Defendants.

CIVIL CASE NO. CV06-00026

MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
OF PLAINTIFF'S MOTION
FOR REMAND

17
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19 I.

20 **PROCEDURAL HISTORY**

21 On September 1, 2006, the Estate of Jose Martinez Torres filed a Complaint for Cancellation
22 of Instrument, requesting the Superior Court of Guam (the "Superior Court") to instruct the
23 Department of Land Management to cancel Instrument No. 414341, which is a map that reflects an

1 outcome of Plaintiff's Guam claim depends on the interpretation of federal law, is false and
2 misleading.¹ The validity or invalidity of the granting of an easement has absolutely nothing to do
3 with federal law.

4 IV.

5 **NOT FEDERAL EXCESS LAND**

6 In order to entertain this removal, the Court would have to overlook the fact that the
7 easement in this case is invalid. An invalid or illegally obtained easement could not and would not
8 be subject to any law, including but not limited to the Guam Excess Lands Act.

9 But Defendant Goodwind is mistaken as to the history of the property in question and,
10 therefore, has misled the Court into believing that this land has been returned by the United States
11 Government when, in fact, a research conducted on the property shows that Guaranteed Claim No.
12 2802 was issued to the government of Guam as far back as 1928, and was never part of the federal
13 land condemnation cases filed after World War II. See Guaranteed Claim attached hereto as Exhibit
14 "A" and incorporated herein by reference. "Tract 100" property units were first designated to
15 facilitate subdivision of the "Liguan" area by Kaiser Hawaii Kai ("Kaiser"). Kaiser received a grant
16 of "Tract 100" land and proceeded to subdivide and develop residential housing. After selling the
17 subdivided lots with constructed homes, Kaiser dedicated, and the government of Guam accepted,
18 all lands unused in the housing area. Thereafter, the Guam Ancestral Lands Commission (the
19 "Commission") was granted Lot No. 5007 by the government of Guam via Instrument No. 666056
20 on February 12, 2002. See Grant Deed attached hereto as Exhibit "B" and incorporated herein by
21 reference. The Commission then quitclaimed its interest in Lot No. 5007 to the Estate by a
22

23 ¹ Interestingly, in paragraph 11 of Goodwind's Notice of Removal of Action pursuant to 28
U.S.C. §§ 1331 and 1446(a) and (b), in sentence 1, admits that Plaintiff's claim is a "Guam claim."

1 Quitclaim Deed recorded on November 3, 2004 under Instrument No. 699987. *See* Quitclaim Deed
2 attached hereto as Exhibit "C" and incorporated herein by reference. Hopefully, this brief history
3 shows the Court how the Commission came into possession of Lot No. 5007.

4 In a nutshell, the legal description of the basic subject lot is number 5007. "Tract 100" is a
5 survey designation of a portion of Basic Lot No. 5007, (and adjacent lots) not a legal property
6 description. The government of Guam's use of a survey designation "Tract 100" instead of a legal
7 description of the basic subject lot number 5007, creates the cadastral confusion leading to the
8 encroachment of the returned Ancestral land owned by the Estate. As a further explanation, Plaintiff
9 submits the following exhibits:

10 (1) Exhibit "D", Aerial photograph of an Overlay of Basic Lot No. 5007 with Tract 100
11 layer identifying the encroachment zone.

12 (2) Exhibit "E", Aerial photograph of Tract 100.

13 As the Court can see from the enclosed exhibits, the property was never returned by the
14 United States Federal Government as it is on the south or eastside of *Marine Drive* where no federal
15 return lands exist. Therefore, the property was always in possession of the government of Guam or
16 was rededicated to the government by Kaiser and transferred to by the government of Guam to the
17 Ancestral Lands Commission.

18 V.

19 **REQUEST FOR COSTS AND ATTORNEYS' FEES**

20 Section 1447(c) provides that "an order remanding the case may require payment of just costs
21 and any actual expenses, including attorney fees, incurred as a result of removal." However, costs
22 may not be awarded when the Court remanded the case on grounds other than those listed in §
23 1447(c) (procedural defects and lack of subject matter jurisdiction). *Ferrari, Alvarez, Olsen &*

1 Because Defendant Goodwind has failed to conduct basic research, Plaintiff has suffered
2 delay and fees conservatively estimated at Ten Thousand Dollars (\$10,000). Plaintiff humbly
3 requests that Defendant Goodwind be ordered to pay for Plaintiff's fees and costs.

4 Respectfully submitted this 24th day of October, 2006.

5 **TEKER TORRES & TEKER, P.C.**

6
7 By  JOSEPH C. RAZZANO, ESQ.
8 Attorneys for Plaintiff
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PLDSG:EST. JMTORRES:DC CASE:002

TEKER TORRES & TEKER, P.C.
SUITE 2A, 130 ASPINALL AVENUE
HAGATNA, GUAM 96910
TELEPHONE (671) 477-9891-4

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IN THE SUPERIOR COURT OF GUAM

CLERK OF COURT
BY: _____

ESTATE OF JOSE MARTINEZ TORRES,) CIVIL CASE NO. CV1093-06
deceased,)
)
Plaintiff,)
vs.) DECISION AND ORDER
)
THE GOVERNMENT OF GUAM,)
)
Defendant.)

This matter came before the Honorable Alberto C. Lamorena III on February 22, 2008 on Defendant's Motion to Amend, and on January 30, 2009 on Plaintiff and Defendant's Motions for Summary Judgment. Attorney William C. Bischoff appeared on behalf of Defendant. Appearing on behalf of Plaintiff were Attorneys Joseph C. Razzano and Lawrence J. Teker. After reading the parties' briefs and hearing the arguments, the Court took the matters under advisement. The Court now issues its Decision and Order.

FACTUAL HISTORY

This issue concerns a plot of land in the village of Dededo identified as Lot No. 5007 on Tract 100, and the easement located upon it.¹ The plot belonged to Pedro M. Duarte prior to 1914. On January 14, 1914, Mr. Duarte purported to sell land including the plot at issue to Jose Torres Martinez for \$4,000, of which Mr. Martinez immediately paid \$2,000. In 1915, assets of Mr. Duarte were seized by the Naval Government of Guam and placed up for public auction to

¹ The parties disagree on whether Lot No. 5007 was properly consolidated into Tract 100. As discussed below, this distinction is not critical to the Court's analysis.

27

1 cover restitution from Mr. Duarte's conviction for embezzlement during his service as
2 Postmaster. One of the assets listed for auction was the land in Dededo that included the plot at
3 issue. Mr. Martinez requested the asset be removed, and this request was initially granted by
4 Judge Luis Torres. However, the Governor of Guam declared the judgment null and void, which
5 was followed by an April 13, 1915 decree by Judge Frank Portusach that reiterated the
6 Governor's position that the existing Mortgage Law and executive general orders had not been
7 properly followed in the sale.
8

9
10 Mr. Martinez's attempts at appealing this decision or having his \$2,000 returned to him
11 were rebuffed, and the land was put up for auction. After no bidders matched the minimum
12 request by the government, the government had the property adjudicated to itself. In 1950 the
13 Department of the Interior conveyed the land to the Government of Guam.
14

15 On November 4, 2002 the Governor of Guam signed a grant deed, approved as to form
16 by the Acting Attorney General of Guam, purporting to transfer surplus government land, which
17 included the plot at issue, from the Government of Guam to the Ancestral Lands Commission.
18 On October 29, 2004, after a title hearing on the plot at issue on October 12, 2004, the Ancestral
19 Lands Commission issued a quitclaim deed on the plot granting it to the Plaintiff.
20

21 Plaintiff filed this case seeking to cancel the easement across the plot at issue created
22 under Instrument No. 414341, alleging it had not been approved by the Guam Legislature. The
23 Government of Guam and Goodwind Development Corporation answered and filed
24 counterclaims, including a counterclaim by the Government of Guam requesting the Court to
25 quiet title within the public access and utility easements on the plot at issue.
26

27 The Government of Guam and Goodwind Development Corporation filed a joint Motion
28 for Leave to File Amended Answer and Counterclaim on April 3, 2008. The Government of

1 Guam's Proposed Second Amended Answer and Counterclaim was substantially similar, with
2 the exception that the counterclaim requested the Court to quiet title to the entire property rather
3 than just the easement in the Government of Guam.
4

5 On May 16, 2008, Plaintiff filed a Motion for Summary Judgment. The Government of
6 Guam filed an opposition and its own cross-motion for summary judgment on June 18, 2008.
7 Goodwind Development Corporation settled separately with the Estate on October 23, 2008.
8 The Estate filed an opposition to the cross-motion and reply on December 5, 2008. The Court
9 now addresses these motions.
10

11 DISCUSSION

12 I. Motion to Amend

13 Defendant moves to amend its Counterclaim, seeking to modify its request for the Court
14 to quiet title from merely including the easement on the plot to including the entire plot at issue.
15 Guam Rule of Civil Procedure 15(a) provides that a party may amend the party's pleading only
16 by leave of court or by written consent of the adverse party. "In the absence of any apparent or
17 declared reason - such as undue delay, bad faith or dilatory motive on the part of the movant,
18 repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the
19 opposing party by virtue of allowance of the amendment, futility of amendment, etc.-the leave
20 sought should, as the rules require, be 'freely given.'" Foman v. Davis, 371 U.S. 178, 182
21 (1962), Arashi & Co., Inc. v. Nakashima Enterprises, Inc., 2005 Guam 21 at ¶ 16. "Under Rule
22 15 the district court may and should liberally allow an amendment to the pleadings if prejudice
23 does not result." Citizens Sec. Bank (Guam), Inc. v. Bidaure, 1997 Guam 3 at ¶ 16.
24
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26 There is a lengthy delay between Defendant's initial Answer and his proposed
27 amendment, however it is largely due to the case having been temporarily removed to the
28

1 District Court. There appears to be no bad faith or dilatory motive on Defendant's part, nor
2 would allowing this amendment appear to cause prejudice to the Plaintiff, as the Plaintiff has
3 argued its summary judgment motion as if the amendment were also being considered by the
4 Court. See, e.g., Plaintiff's Opposition and Reply, December 5, 2008 at pg. 2-3, pg. 3 footnote 1.
5 As such, the Court grants Defendant's Motion to Amend.
6

7 **II. Standard for Summary Judgment**

8 Summary judgment shall be granted if there is no genuine issue as to any material fact
9 and the moving party is entitled to judgment as a matter of law. A genuine issue exists when
10 there is sufficient evidence establishing a factual dispute requiring resolution by a fact-finder.
11 Iizuka Corp. v. Kawasho Int'l [Guam], Inc., 1997 Guam 10, at ¶ 7; T.W. Elect. Serv., Inc. v.
12 Pacific Elec. Contractors Ass'n., 809 F.2d 626, 630 (9th Cir. 1987). The factual dispute must
13 concern a material fact. *Id.* Whether a fact is material is determined by the governing
14 substantive law; if the fact may affect the outcome, it is material. Anderson v. Liberty Lobby,
15 Inc., 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); Edwards Corp. v. Kawasho Int'l
16 [Guam], Inc., 2000 Guam 27, at ¶ 7.
17

18 Inferences must be drawn, and evidence must be viewed in the light most favorable to the
19 nonmoving party, and the moving party carries the burden of showing the court those portions of
20 the relevant documents which it believes demonstrate the absence of an issue of material fact.
21 Edwards Corp. v. Kawasho Int'l [Guam], Inc., 2000 Guam 27, at ¶ 7. The moving party is not
22 required to negate each element of the non-moving party's case. Rather, the moving party
23 satisfies and discharges its burden by establishing the absence of evidence to support the non-
24 moving party's case. Kim v. Hong, CVA97-007, page 3 (1997).
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1 If a lack of evidence is established by the moving party, the non-moving party must
2 present specific facts showing there is a genuine issue for trial. The nonmoving party may not
3 merely rely on conclusory allegations contained in the pleadings, but must present some
4 significant probative evidence tending to support his assertion. Id. If the non-moving party fails
5 to make a showing sufficient to establish the existence of an element essential to that party's
6 case, for which the party will bear the burden of proof at trial, then Rule 56(c) requires entry of
7 summary judgment against the non-moving party. Celotex Corp. v. Catrett, 477 U.S. 317
8 (1986).
9

10 11 **III. Transfer of Lot No. 5007/Tract 100**

12 Defendant alleges that the transfer of the land at issue from the Government of Guam to
13 the Ancestral Lands Commission is invalid because there was no legislative approval of the
14 transfer as required under Title 21 G.C.A. §60112. Plaintiff argues that several public laws,
15 including P.L. 24-45, P.L. 22-145, P.L. 23-23, or P.L. 25-178 indicate the approval of the
16 legislature to transfer ancestral lands to the Commission, thus no specialized legislation is
17 required.
18

19 However, the history of the plot at issue demonstrates that it is not a member of the
20 classes of land transferred to the Ancestral Lands Commission by the aforementioned public
21 laws, nor is it one of the tracts specifically identified for transfer. Even if this Court were to
22 assume, *arguendo*, that the Plaintiff was the landowner of the plot as issue prior to its acquisition
23 by the Naval Government, the policy of the government to return lands to their estates does not
24 apply to lands clearly under existing public use, or lands acquired by the government prior to
25 January 1, 1930. See P.L. 23-23 at §2004(a)-(c), P.L. 24-45 at pg. 32.
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1 Plaintiff argues that the classification in P.L. 24-45 establishing January 1, 1930 as a
2 cutoff is unconstitutional because it deprives it of equal protection of laws. It claims that P.L. 22-
3 145 gave it a vested fee simple interest in the lands, and that the enactment of P.L. 24-45
4 subjected it to disparate treatment. But as mentioned above, the plot at issue was not part of the
5 lands included in P.L. 22-145, and even if it were, Section 8 of that law exempts land used for
6 public easements, as recognized by P.L. 24-25, pg. 31 line 21. Even if this Court assumed the
7 Estate had standing to challenge the classification, as it is questionable whether the Estate could
8 be classified as an original owner of the plot at issue, and even if this Court were to find the
9 cutoff date an unconstitutional distinction, the language in both P.L. 22-145 and P.L. 24-45
10 exempting land used for public easements would prevent the transfer of the plot at issue, and
11 would easily qualify as a legitimate distinction under the rational basis standard. Fields v. Legacy
12 Health System, 413 F.3d 943, 955 (9th Cir. 2005).

13 IV. Estoppel by Deed

14 Plaintiff contends that Defendant is estopped from denying Plaintiff's interest in the
15 estate under Title 21 G.C.A. §4204, which provides in part that "Every grant of an estate in real
16 property is conclusive against the grantor..." It also cites Taitano v. Lujan, 2005 Guam 26² and
17 Pinsky v. Sloat, 130 Cal.App.2d 579, 588 (Cal.Ct.App.1955). However, as Pinsky acknowledges,
18 there are exceptions to this doctrine, the most critical being its modification when the
19 government is the grantor. The authority of a public officer cannot be extended by estoppel.
20 Boren v. State Personnel Bd., 234 P.2d 981 (Cal.1951). Here, the Governor did not have the
21 legal authority to transfer the land to the Ancestral Lands Commission, as Title 21 G.C.A.
22 §60112 requires the approval of the Legislature.

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² While Taitano does include a mention of §4204, it does not discuss its application in a way pertinent to this issue.

1 "...Estoppel against the government must rest on affirmative misconduct going beyond
2 mere negligence... Furthermore, estoppel will apply only where the government's wrongful act
3 will cause a serious injustice, and the public's interest will not suffer undue damage by
4 imposition of the liability." Morgan v. Heckler, 779 F.2d 544, 545 (9th Cir.1985), Mukherjee v.
5 I.N.S., 793 F.2d 1006, 1008 (9th Cir.1986). "Persons dealing with the government are charged
6 with knowing government statutes and regulations, and they assume the risk that government
7 agents may exceed their authority and provide misinformation." Mukherjee at 1009.
8 Acquiescence to illegal acts at an earlier time does not estop the government from enforcing the
9 law on a later date. Eicher v. Louisiana State Police, Riverboat Gaming Enforcement Div., 710
10 So.2d 799 (La.Ct.App.1st Cir. 1998).

13 Here, the Court has little factual information on the process or motive behind the
14 Governor's decision to sign the deed, and the Attorney General's decision to approve the deed as
15 to form.³ The Court does not know whether the executive branch was relying upon a
16 representation by the Plaintiff or Ancestral Lands Commission that the aforementioned public
17 laws fulfilled the requirement of legislative approval, whether the Governor mistook the
18 Attorney General's approval to form as an approval to content, or whether the executive branch
19 was aware of the deficiency and proceeded regardless. There is also no evidence regarding the
20 potential damage to the public's interest if the Court were to acknowledge the estoppel. Because
21 both parties are moving for summary judgment, and neither side has established an absence of
22 evidence on the part of the opposing party in support of its position, the Court cannot make a
23 legal ruling on the issue of estoppel at this time, as material facts are still at issue. Because the
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28 ³ The Court is concerned regarding the legal effect of an "approval as to form", especially as to how it affects a
governmental entity's susceptibility to an argument of estoppel.

1 issue of estoppel is determinative in this matter, the Court does not address the other issues
2 presented in the parties' briefs.

3
4 **CONCLUSION**

5 Based on the above, Defendant's Motion to Amend is GRANTED, Defendant's and
6 Plaintiff's Motions for Summary Judgment are DENIED.

7
8 **IT IS SO ORDERED** this 19th day of October, 2009.

Original Signed By:
Hon. Alberto C. Lamorena, III

11
12 **Alberto C. Lamorena III**
13 **Presiding Judge**
14 **Superior Court of Guam**

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18 I do hereby certify that the foregoing
19 is a full true and correct copy of the
20 original as filed in the office of the
21 Clerk of the Superior Court of Guam.
22 Donec at Hagatna, Guam.

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OCT 19 2009

Domingo M. Noguera
Clerk of the Superior Court of Guam

Island of Guam, Government of Guam
Department of Land Management Office of The Recorder

File for record is Instrument No. 666056
on the year 2002 Month 12 Day 02 Time 9:30
Recording Fee DE-OFFICIO Receipt No. _____
Deputy Recorder Jane Yamasaki

(SPACE ABOVE LINE FOR RECORDER'S USE ONLY)

GRANT DEED

This Grant Deed is entered between the Government of Guam, whose address is Post Office Box 2950, Hagåtña, Guam 96932, hereinafter referred to as "Grantor", and the Ancestral Lands Commission, whose address is Post Office Box 2950, Hagåtña, Guam 96932, hereinafter referred to as "Grantee".

This Deed is of surplus government land being transferred to the Grantee and made pursuant to the requirements of Public Law 25-45.

Accordingly, Grantor hereby grants, bargains, sells and conveys unto Grantee, its successors and assigns, all right, title and interest, in fee simple, the following described property ("Property"):

Lot No. 5001, Dededo, Estate No. 2531, Suburban, subject to an approved survey to be recorded at the Department of Land Management, Government of Guam. Guaranteed Claim No. 2802 - The Naval Government of Guam.

Lot No. 5002, Dededo, Estate No. 2531, Suburban, subject to an approved survey to be recorded at the Department of Land Management, Government of Guam. Guaranteed Claim No. 2802 - The Naval Government of Guam.

EXHIBIT A

Lot No. 5007, Dededo, Estate No. 2531, Suburban, subject to an approved survey to be recorded at the Department of Land Management, Government of Guam. Guaranteed Claim No. 2802 - The Naval Government of Guam.

Lot No. 5007-1, Dededo, Estate No. 2531, Suburban, subject to an approved survey to be recorded at the Department of Land Management, Government of Guam. Guaranteed Claim No. 2802 - The Naval Government of Guam.

Lot No. 5008, Dededo, Estate No. 2531, Suburban, subject to an approved survey to be recorded at the Department of Land Management, Government of Guam. Guaranteed Claim No. 2802 - The Naval Government of Guam.

Lot No. 5008-1, Dededo, Estate No. 2531, Suburban, subject to an approved survey to be recorded at the Department of Land Management, Government of Guam. Guaranteed Claim No. 2802 - The Naval Government of Guam.

Together with the reversions, remainders, rents, issues and profits thereof and all of the estate, right, title and interest of the Grantor, both at law and in equity, therein and thereto.

To have and to hold the same, together with all buildings, improvements, rights, easements, privileges and appurtenances thereon and thereto belonging or appertaining or held and enjoyed therewith by Grantor, unto the Grantee, in fee simple, its successors and assigns, forever.

Grantor warrants and covenants with Grantee, and its successors and assigns, that Grantor is lawfully seized of the Property in fee simple, subject to any liens, encumbrances, access, and utility easements, and other encumbrances, whether of record or not of record.


AVAILABILITY OF WATER AND POWER

Water and electrical power are not immediately available to the Property. Grantee shall not hold the Government of Guam responsible for water or electrical hookups or connections.

This Grant Deed has been executed the day and year acknowledged below.

GRANTOR:

GOVERNMENT OF GUAM

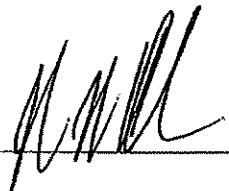

By: CARL T.C. GUTIERREZ
GOVERNOR OF GUAM

Date:

4th Nov. 2002

GRANTEE:

ANCESTRAL LANDS COMMISSION

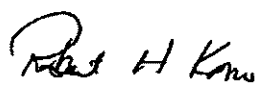

By:
Its Authorized Representative

Date:

4th Nov. 2002

APPROVED AS TO FORM:

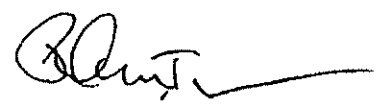
OFFICE OF THE ATTORNEY GENERAL


By: ROBERT H. KONO
Acting Attorney General of Guam

Date:

4th Nov. 2002

MANTANONA LAW OFFICE


By: RAWLEN M. MANTANONA
Attorneys for the Ancestral Lands Commission

Date:

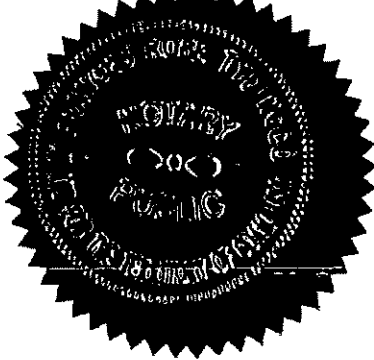
11/14/02

Hagåtña, Guam

) ss:

On this 4th day of Nov., 2002, before me a Notary Public in and for Guam, personally appeared **Carl T. C. Gutierrez**, known to me to be the Governor of Guam, whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed on behalf of the **Government of Guam** for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the date last above written.



Rancesrose Tyding
Notary Public

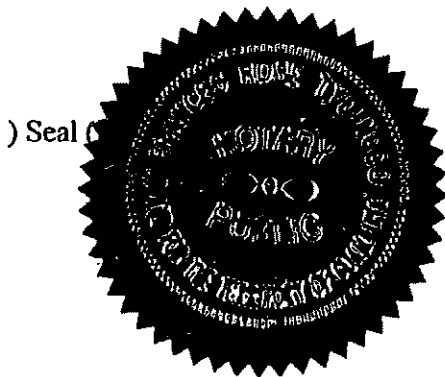
RANCESROSE TYDING
NOTARY PUBLIC
In and for Guam U.S.A.
My commission Expires: Sept. 12, 2004
P.O. Box 20174, GME, Guam 96921

Hagåtña, Guam

) ss:

On this 4th day of Nov., 2002, before me a Notary Public in and for Guam, personally appeared John R. Camacho, known to me to be the authorized representative of **Ancestral Lands Commission**, whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same as his/her free and voluntary act and deed on behalf of **Ancestral Lands Commission** for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the date last above written.



Rancesrose Tyding
Notary Public

RANCESROSE TYDING
NOTARY PUBLIC
In and for Guam U.S.A.
My commission Expires: Sept. 12, 2004
P.O. Box 20174, GME, Guam 96921

Wiley

2012 FEB 27 11:25:52

CLERK OF COURT

U.S. DISTRICT COURT

IN THE SUPERIOR COURT OF GUAM

GOVERNMENT OF GUAM,)
)
Plaintiff,)
)
v.)
)
HELENE TORRES and EVELYN O'KEEFE,)
in their capacities as CO-))
ADMINISTRATRIXES of the ESTATE OF)
JOSE MARTINEZ TORRES, and the)
ESTATE OF JOSE MARTINEZ TORRES,)
)
Defendants.)

CIVIL CASE NO. CV1124-09

DECISION AND ORDER

INTRODUCTION

This matter came before the Honorable Arthur R. Barcinas on the 17th day of February, 2012, for hearing on the Defendants' Motion to Dismiss the Third Amended Complaint, filed September 20, 2010. Assistant Attorney General William C. Bischoff represented the Government, and Attorneys Joseph C. Razzano and F. Randall Cunliffe represented the Defendants.

DISCUSSION

The Defendants move this Court to dismiss the Government's claims pursuant to GRCP Rule 12 (b)(6). Under Rule 12 (b)(6), the facts in the complaint are presumed to be true, and the

1 deliberately inserted in a deed a covenant tending to his own advantage and
2 another's prejudice, and the latter in ignorance that the instrument contains the
3 covenant accepts it as in fulfillment of a contract which requires no such
4 stipulation. The denial of relief in such a case would be at variance with long
established doctrines of courts of equity, and a reproach to the law itself. 1 Story
Eq.Jur., par. 138c.

5 Id., at 231.

6 As in the Denkmann Lumber case and the Kilmer case, the Government has connected
7 its accusation of unilateral mistake to wrongdoing on the part of the Defendants' agents. In
8 particular, the Government has identified the specific conduct of the Defendants' agent in
9 knowingly and fraudulently inserting a provision in the deed without the Commission's
10 approval, and representing that the deed was accurately drafted in accordance with the
11 Commission's oral decision on the matter, when it was not.

12 Therefore, the Third Amended Complaint meets the pleading requirements of Rule 9(b)
13 to support a finding that the Government has alleged fraudulent inducement on the part of the
14 Defendants' agent, in order to justify a grant of the relief of revision of a deed under 20 GCA §
15 3230 for unilateral mistake.

16 The decision to deny a motion made under Rule 12(b)(6) requires a finding that the
17 complaint meets the pleading requirements of Rule 8 and sets forth a cognizable claim for relief
18 under a real legal theory. Securities Investor Protection Corp. v. Vigman, 764 F.2d 1309, 1318
19 (9th Cir.1985); Bowers v. Hardwick, 478 U.S. 186, 202 (1986); accord Hill v. Booz Allen
20 Hamilton, Inc., Civil Case No. 07-00034, 2009 WL 1620403, *3 (D. Ct. Guam, June 9,
21 2009)(quoting Mendiondo v. Centinela Hosp. Med. Ctr., 521 F.3d 1097, 1104 (9th Cir. 2008))
22 (Dismissal is appropriate under Rule 12(b)(6) "where the complaint lacks a cognizable legal
23 theory or sufficient facts to support a cognizable legal theory.").

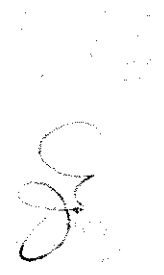
CONCLUSION

After considering the motion, the Court finds that the Plaintiff has standing to maintain suit against the Defendants and has sufficiently alleged causes of action which would entitle it to the remedies listed in its Third Amended Complaint. Based upon the foregoing, the Motion to Dismiss is DENIED.

IT IS SO ORDERED this JUN 27 2012.



HONORABLE ARTHUR R. BARCINAS
Judge, Superior Court of Guam



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5 **IN THE SUPERIOR COURT OF GUAM**
6

7 THE GOVERNMENT OF GUAM,

8 Plaintiff,

9 v.
10

11 HELENE TORRES and EVELYN O'KEEFE,
12 in their capacities as CO-
13 ADMINISTRATRIXES OF THE ESTATE
14 OF JOSE MARTINEZ TORRES, and THE
15 ESTATE OF JOSE MARTINEZ TORRES,

16 Defendants.
17

CIVIL CASE NO. CV 1124-09

DECISION AND ORDER

18 **INTRODUCTION**

19 This matter came before the Honorable Arthur R. Barcinas on the 30th day of November,
20 2012, for hearing on the Government's Motion for Summary Judgment on the Third Amended
21 Complaint and the Defendants' Cross-Motion for Summary Judgment. Assistant Attorney
22 General William Bischoff represented the Government, and Attorney Joseph Razzano
23 represented the Defendants. For the reasons set forth below, the Court grants in part the
24 Government's Motion for Summary Judgment on the Third Amended Complaint, denies in part
25 the Defendants' Cross-Motion for Summary Judgment, dismisses in part the causes of action in
26 this case, and remands this controversy to the GALC for further proceedings.
27
28

1 course of two weeks, with no indication that the language of the condition was discussed.
2 Further, Mr. Leon Guerrero is a land agent whose professional expertise could not have been
3 expected to include the vagaries of probate court jurisdiction. Mr. Yanza's declaration reflects
4 that the subject matter of his discussions with Mr. Leon Guerrero was the property description.
5 Mr. Leon Guerrero's job, as a land agent, was ensuring that the deed clearly and accurately
6 described the lots to be transferred. He is not a lawyer. In light of his professional role, his
7 approval of the deed cannot reasonably be understood as assent to the operative legal language
8 of the deed condition relevant to the issue here.
9

10 It appears to the Court that the GALC's Final Written Decision and Order was also
11 drafted by the Defendants' attorneys, and that its language was taken from that of the already-
12 finalized deed condition, rather than vice versa. The D&O fails to reflect fully the GALC's
13 decision as enunciated in open hearing. In light of these considerations, the Court does not find
14 the D&O to be evidence sufficient to raise a genuine dispute as to the GALC's intent.
15

16 Indeed, none of the evidence before the Court supports any genuine dispute of the fact
17 that the conditional deed did not express the true intentions of the GALC, that this deficiency
18 was due to the unilateral mistake of the GALC in approving and executing deed language not
19 accurately reflecting its oral decision, and that the Defendants knew or should have known at
20 the time of the execution of the deed that its language did not accurately reflect the GALC's oral
21 decision. The GALC's execution of the deed as drafted by the Defendants' attorneys thus
22 constitutes a unilateral mistake of which the Defendants availed themselves with knowledge and
23 for their own benefit. Accordingly, the Government is entitled, as a matter of law, to
24 reformation of the deed language.
25
26

27 //


analysis of the evidence would seem to be appropriate in this vigorously contested case, which appears destined to come again before a Court in some form or another before it is finally put to rest.


CONCLUSION

For the reasons set forth above, the Court finds that summary judgment in favor of the Government is appropriate on the issue of reformation. Accordingly, the Government's Motion for Summary Judgment is **GRANTED** in part, and the Defendants' Cross-Motion for Summary Judgment is **DENIED** in part.

The remaining counts of the complaint are **DISMISSED** for lack of subject matter jurisdiction, and the question of the validity of the Defendants' ancestral claim is **REMANDED** to the GALC for further proceedings.

SEP 30 2013
IT IS SO ORDERED this ____ day of September, 2013.


HONORABLE ARTHUR R. BARCINAS
Judge, Superior Court of Guam

RECEIVED
CLERK OF COURT
SEP 30 2013

CLERK OF COURT

FILED
SUPERIOR COURT
OF GUAM

2015 NOV 30 PM 3:59

CLERK OF COURT

BY: 

CIVILLE & TANG, PLLC

SUITE 200, 330 HERNAN CORTEZ AVENUE
HAGATÑA, GUAM 96910
TELEPHONE: (671) 472-8868
FACSIMILE: (671) 477-2511

*Attorneys for Defendant, Geraldine Gutierrez,
Administratrix of the Estate of Jose Martinez Torres*

IN THE SUPERIOR COURT OF GUAM

GOVERNMENT OF GUAM,

Plaintiff,

vs.

HELENE TORRES and EVELYN
O'KEEFE, in their capacities as CO-
ADMINISTRATRIXES OF THE ESTATE
OF JOSE MARTINEZ TORRES, and THE
ESTATE OF JOSE MARTINEZ TORRES,

Defendants.

CIVIL CASE NO. CV0454-12

**DEFENDANTS'
MOTION FOR SETTLEMENT
CONFERENCE AND
APPOINTMENT OF SETTLEMENT
JUDGE**

COMES NOW, Defendants, The Estate of Jose Martinez Torres and its Administratrix, Geraldine Gutierrez, through counsel undersigned and hereby move the Honorable Court pursuant to Local Rule of the Superior Court of Guam CVR 16.6 for an Order granting a conference for the purposes of settlement together with appointment of a settlement judge in the above captioned action.

Opposing counsel attorney David Highsmith was contacted on November 24, 2015 via e-mail and his clients do not wish to participate in a settlement conference or the appointment of a settlement Judge.

POINTS AND AUTHORITIES

The policy of settlement of civil disputes is favored by the law and applicable rules of civil procedure. Specifically, Guam Rule of Evidence 408 encourages the policy of settlement



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by protecting and excluding from any considerations of evidence of correspondence if it offers terms of settlement.

The Proposed Scheduling Order in this action was received by the Court on August 17, 2015 (the "Proposed Order.") Plaintiffs' counsel acknowledges some discussion of settlement has taken place but opposes mediation. *See* Proposed Order at P.3. Defendants suggest that this case be immediately stayed pending the completion of a settlement conference in good faith to be held as soon as is practicable.

Additionally, Defendants request that the government of Guam be required to be present at the conference with a client representative.

Respectfully submitted at Hagåtña, Guam, on the 30th day of November, 2015.

CIVILLE & TANG, PLLC

By: 

JOSEPH C. RAZZANO

Attorney for Defendants



Office of the Attorney General of Guam

590 S. Marine Corps Drive, Suite 901 ♦ Tamuning, GU 96913

Phone (671) 475-3324 ♦ Fax (671) 477-4703 ♦ ag@oagguam.org ♦ oagguam.org

Hon. Leevin Taitano Camacho
Attorney General of Guam

September 22, 2022

VIA EMAIL

bischoffbill2@yahoo.com

William C. Bischoff, Esq.
121 Calvo Beach Rd.
Ipan, Talofofo, Guam 96915

RE: September 6, 2022 FOIA Request (Ref. AG 22-0426 / FOIA2022-019)

Hafa Adai Attorney Bischoff:

Our office received your September 6, 2022 FOIA request for the following:

- "1. A copy of any settlement agreement that was reached with any person or party regarding the July, 2020, dismissal of CV1124-09 in either or both of the Guam Supreme and Superior Courts.
2. A copy of all letters, emails, and any other written communications that the Office of the Attorney General had with any persons or parties regarding the July, 2020, dismissal of CV1124-09 in either or both of the Guam Supreme and Superior Courts.
3. A copy of any memorandums or other written communications that the Office of the Attorney General had with the Guam Ancestral Lands Commission regarding the July, 2020, dismissal of CV1124-09 in either or both of the Guam Supreme and Superior Courts.
4. A copy of any and all documents evidencing that the Guam Ancestral Lands Commission formally approved the July, 2020, dismissal of CV1124-09 in either or both of the Guam Supreme and Superior Courts."

Attached are our records responsive to your request. Should you have any questions, please contact us at foiarequests@oagguam.org or 475-2580.

Sinseramente,

si Stephanie E. Mendiola
General Counsel/Deputy Attorney General
Division of General Counsel

Attachments (40 pages)

SETTLEMENT AND MUTUAL RELEASE

This Settlement and Mutual Release Agreement (the "Settlement Agreement") is entered into this _____ day of July, 2020, by and amongst the following parties to globally resolve the litigation that exists among them:

Party	Address
The Estates of Jose Martinez Torres and Maria Calvo Torres, by and through its Administrator Geraldine Gutierrez (the "Estate")	c/o The law Offices of F. Randall Cunliffe, Suite 200, 210 Archbishop F.C. Flores Street, Hagåtña, Guam 96910
The Government of Guam including its non-autonomous agency the Guam Ancestral Lands Commission (the "Government")	590 S. Marine Corps Dr., Suite 901, Tamuning, Guam 96913.
Western Sales Trading Company	147 Frank G. Benavente St. South Barrigada, Guam 96913
WSTCO Quality Feed and Supply, LLC	P.O. Box 8530 Tamuning, Guam 96931
Jay Rojas	904 Kahou Street, #102, Pa'I Foundation, Honolulu, Hawaii, 96817

This Settlement Agreement is made with reference to the following facts.

RECITALS

A. WHEREAS, the Estate of Jose Martinez Torres was re-opened on February 20, 2007, for the purpose of receiving and distributing lands returned to the heirs of the Estate.

B. WHEREAS, the Guam Ancestral Lands Commission ("GALC") is a non-autonomous agency of the Government of Guam, created through Public Law 25-45 and tasked with the responsibility of receiving title from the federal excess lands program on behalf of the Government and returning those lands to the original owners on behalf of the Government.

C. WHEREAS, the GALC, on behalf of the Government returned, or granted interests in, the following Guam property parcels to Evelyn V. O'Keefe as an heir of Jose Martinez Torres:

Lot No. 5001
Lot No. 5002
Lot No. 5007-1
Lot No. 5008
Lot No. 5008-1
Lot No. AL002-1
Lot No. AL002-2
Lot Radio Barrigada C aka Parcel N5-D

intended to be final and binding upon the parties and is further intended to be effective as a full and final accord and satisfaction among them as to the claims released above in paragraph 3. Each Party relies upon the finality of this Settlement Agreement as a material factor inducing that Party's execution of this Settlement Agreement. This Settlement Agreement may not be altered or amended except by a writing signed by all of the parties to this Settlement Agreement expressly stating that such modification is intended.

10. **Independent Advice of Counsel.** In executing this Settlement Agreement, the Parties have relied solely upon their own judgment, belief and knowledge and, to the extent they feel it is necessary, have sought the advice and recommendations of their own independently selected counsel concerning the nature, extent and duration of their rights and claims relating to the Superior Court Litigation, the WSTCO Litigation, the rights affected by this Settlement Agreement, the form and content of this Settlement Agreement, and the advisability of entering into and executing this Settlement Agreement. All Parties have made such investigation of the facts pertaining to the releases contained herein as they deem necessary. No Party has been unduly influenced to any extent whatsoever by any other Party. Except as expressly stated in this Settlement Agreement, no Party has made any statement or representation to any other Party regarding any fact, which statement or representation is relied upon by any other Party in entering into this Settlement Agreement. Except as expressly stated in this Settlement Agreement, in connection with the execution of this Settlement Agreement or the making of the settlement provided for herein, no Party to this Settlement Agreement has relied upon any statement, representation, or promise of any other Party not expressly contained in it. The Parties have read this Settlement Agreement carefully. The contents of this Settlement Agreement are known and understood by the signatories, and this Settlement Agreement is freely and voluntarily signed.

11. **Use of This Agreement in Court.** This Settlement Agreement may be pleaded as a full and complete defense to any causes of action that may be instituted, prosecuted or attempted for, upon, or in respect of any of the claims released pursuant to this Settlement Agreement.

12. **Waiver.** No waiver of any covenant or obligation of this Settlement Agreement shall be effective unless contained in a writing signed by the party against whom such waiver is asserted.

13. **Public Comment/Confidentiality.** The Named Parties, and their agents, agree that they will not hold a press conference, issue a press release, or otherwise take affirmative steps to comment to the press or media, or publicize to any person or entity the settlement, the terms thereof or the allegation contained in the pleadings or the dismissal of any case. The Named Parties may not disclose the consideration behind this Settlement Agreement. The Named Parties may disclose the conditions of settlement expressly authorized to be disclosed, as set forth in Paragraph 14 below.

14. **Private Comment.** The Named Parties agree that they will not disclose the consideration set forth in above to any person or entity including the media, unless ordered to do so by order of a court of competent jurisdiction or as required to comply with the provisions of the Sunshine Act set forth in 5 GCA § 10101 *et seq.*

15. **Severability.** If any portion or term of this Settlement Agreement is held unenforceable by a court of competent jurisdiction, the remainder of this Settlement Agreement shall not be affected and shall remain fully in force and enforceable.

16. **No Assignment of Rights.** Each Party acknowledges, represents, and warrants that it has not voluntarily or involuntarily transferred, assigned, encumbered, hypothecated, or conveyed any of its rights, interests, or claims in the Superior Court litigation and the WSTCO Litigation, and has not voluntarily or involuntarily transferred, assigned, encumbered or hypothecated any of its rights or interests in and to the Claims hereby released in this Settlement Agreement.

17. **Beneficiaries.** This Settlement Agreement is made and entered into for the sole protection and benefit of the Parties to it, as defined by its terms. No other person or entity shall be a direct or indirect beneficiary of or have any direct or indirect cause of action or claim in connection with this Settlement Agreement, or any document executed pursuant to its terms.

18. **Preparation of Agreement.** This Settlement Agreement is the product of negotiation and preparation by and among the Parties and their respective attorneys. The Parties, therefore, expressly acknowledge and agree that this Settlement Agreement shall not be deemed prepared or drafted by one Party or another, or its attorneys, and will be construed accordingly.

19. **Authority to Enter into Agreement and of Signatories.** Each Party represents and warrants that it has the proper authority to enter into this Settlement Agreement and fully bind such Named Party, and that the individual executing this Settlement Agreement is authorized to do so on behalf of the Party. The Named Parties further agree that there are Individual Defendants named as defendants in either the Superior Court or WSTCO Litigation. The Named Parties agree that this Settlement Agreement becomes effective when the Government executes it as contemplated by 5 G.C.A. § 6212(b). Each signatory to this Agreement who signs on behalf of a party expressly represents and warrants that he or she has the authority to sign on behalf of that party.

20. **Printed Electronic Transmission and Counterparts.** This Settlement Agreement may be executed by electronic transmission or in counterparts, and if so executed, each Printed Electronic Transmission or counterpart shall have the force and effect of an original, which together shall constitute one and the same instrument.

21. **Further Necessary Steps.** The Parties shall take all further steps and execute all additional documents that may reasonably be required to effectuate the intent and purposes of this Settlement Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Settlement Agreement as of the date first above written.

**THE ESTATES OF JOSE MARTINEZ
TORRES AND MARA CALVO TORRES**

By: 
GERALDINE GUTIERREZ
Co-Administrator

GOVERNMENT OF GUAM

By: 
JAMES L. CANTO II
Deputy Attorney General

JON JAY ROJAS

By: _____
JON JAY ROJAS

WESTERN SALES TRADING COMPANY

By: 
MARY TORRES
President

WSTCO QUALITY FEED AND SUPPLY, LLC

By: 
EDWIN F. TORRES
Its duly authorized representative

RAZZANO WALSH & TORRES, P.C.

SUITE 100, 139 MURRAY BLVD.

HAGATÑA, GUAM 96910

TELEPHONE: (671) 989-3009

FACSIMILE: (671) 989-8750

Attorneys for Defendant

The Estate of Jose Martinez Torres

and it's Administratrix, Geraldine Gutierrez

FILED
SUPERIOR COURT
OF GUAM

2020 JUL 10 PM 4:04

CLERK OF COURT

By: 

IN THE SUPERIOR COURT OF GUAM

THE GOVERNMENT OF GUAM,

Plaintiff,

vs.

GERALDINE T. GUTIERREZ, in her
capacity as Administrator of THE ESTATE
OF JOSE MARTINEZ TORRES, and the
ESTATE OF MARIA CALVO TORRES, and
KIL KOO YOON,

Defendants.

CIVIL CASE NO. CV1124-09

**STIPULATED NOTICE OF DISMISSAL WITH PREJUDICE PURSUANT TO GUAM
RULE OF CIVIL PROCEDURE 41(a)(1)(ii)**

The parties hereby stipulate that all claims and causes of action in the above-entitled


ORIGINAL

47


action are hereby dismissed with prejudice, pursuant to Rule 41(a)(1)(ii) of the Guam Rules of Civil Procedure. Each party shall bear its own attorneys fees and costs.

DATED this 10TH day of July, 2020.


**OFFICE OF THE ATTORNEY
GENERAL OF GUAM**

By: 
JAMES L. CANTO, II
*Deputy Attorney General
Attorneys for Plaintiff Jose Martinez Torres and it's
Government of Guam*

RAZZANO WALSH & TORRES, P.C.

By: 
JOSEPH C. RAZZANO
*Attorneys for Defendant, the Estate of
Administratrix, Geraldine Gutierrez*

CUNLIFFE & COOK, P.C.

By: 
F. RANDALL CUNLIFFE
*Attorneys for Defendant, the Estate of
Jose Martinez Torres and it's
Administratrix, Geraldine Gutierrez*



Filed

Supreme Court of Guam, Clerk of Court

RAZZANO WALSH & TORRES, P.C.

SUITE 100, 139 MURRAY BLVD.

HAGATÑA, GUAM 96910

TELEPHONE: (671)989-3009

FACSIMILE: (671) 989-8750

Attorneys for Appellees

The Estate of Jose Martinez Torres

and it's Administratrix, Geraldine Gutierrez

IN THE SUPREME COURT OF GUAM

GOVERNMENT OF GUAM,

Plaintiff-Appellant,

vs.

GERLADINE T. GUTIERREZ, IN
HER CAPACITY AS
ADMINISTRATRIX OF THE
ESTATE OF JOSE MARTINEZ
TORRES, and THE ESTATE OF
JOSE MARTINEZ TORRES,

Defendant-Appellees.

SUPREME COURT CASE NOS. CVA16-002

CVA16-009

CVA16-013

SUPERIOR COURT CASE NO. CV1235-12

CV0454-12

CV1124-09

**STIPULATED
NOTICE OF DISMISSAL WITH PREJUDICE PURSUANT TO GUAM RULE
OF APPELLATE PROCEDURE RULE 6(c)(2)**

The Appellants and Appellees in this case, by their attorneys, agree that the appeal shall be dismissed pursuant to Rule 6(c)(2) of the Guam Rules of Appellate

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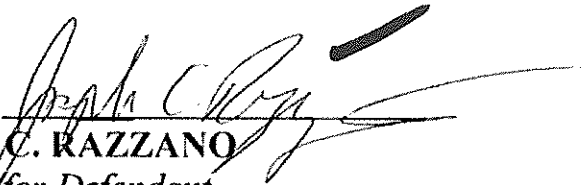
Procedure. Each party shall bear its own attorneys' fees and costs. The Appellees shall bear any further costs required by the Court, if any.

DATED this 10th day of July, 2020.


**OFFICE OF THE ATTORNEY
GENERAL OF GUAM**

**RAZZANO WALSH &
TORRES, P.C.**

By: 
JAMES L. CANTO, II
Deputy Attorney General
Attorneys for Plaintiff-Appellant

By: 
JOSEPH C. RAZZANO
Attorneys for Defendant-
Appellees, the Estate of Jose
Martinez Torres, and
it's Administratrix, Geraldine
Gutierrez

CUNLIFFE & COOK, P.C.

By: 
F. RANDALL CUNLIFFE
Attorneys for Defendant-Appellees,
the Estate of Jose Martinez Torres,
and it's Administratrix, Geraldine Gutierrez

Re: Torres litigation query

Nicolas Toft

Nov 9, 2022,
3:27 PM (8
days ago)

to Catherine, me, Anita, Jeffrey, Mara, Maria, Antolin, Ronald, Nicolas, Louisa, Ron, Angela, Joey

Good afternoon,

I've received a response from the Litigation Deputy Attorney General regarding the dismissal of the Torres litigation cases, and am forwarding it to you now. I've discussed the matter with DAG Canto in order to gain a better understanding of the underlying issues in the cases, and will attempt to answer any questions you may have.

-Nick

Hafa Adai Nick:

I am responding to the inquiry you forwarded to me from the Guam Ancestral Lands Commission (GALC), inquiring as to why the Office of the Attorney General (OAG) did not consult with the GALC regarding a settlement agreement that, in part, dismissed Superior Court of Guam case no. CV1124-09, *Gov't of Guam v. Geraldine T. Gutierrez, et al.* ("the case").

The primary reason that GALC was not consulted is that GALC was not a party to the case. Specifically, the GALC was not the plaintiff in the case. The plaintiff was the Government of Guam, represented by the OAG. As Assistant Attorney General William Bischoff explained to the court at a hearing in a related probate case, Superior Court case no. PR0220-50, *In the Matter of Jose Martinez Torres*, the OAG did not represent the GALC but, instead, the OAG was independently representing the public interest pursuant to 5 GCA § 30103. Furthermore, the chairperson of the GALC did not verify the initial complaint, nor did the GALC chairperson verify any of the 4 subsequent amended complaints in the case.

Possibly even more importantly, in all 5 iterations of the complaint filed in the case, the OAG alleges that the GALC violated the law (21 GCA § 80104) by exceeding its statutory authority when it deeded real property to the estate of Jose Martinez Torres that was not taken by the U.S. Government after January 1, 1930. It is axiomatic that it would be an unethical conflict of interest for the OAG to represent the GALC in a case where the OAG is trying to prove that its own client (the GALC) broke the law and deeded away government property without any legal authority to do so.

In fact, on December 26, 2007, the OAG filed a motion to amend the Government of Guam's answer to the complaint in a related case, Superior Court case no. CV1093-06, *The Estate of Jose Martinez Torres v. The Gov't of Guam, et al.*, in order to name GALC as a defendant, so that the OAG could sue the GALC for its allegedly illegal act. The OAG later withdrew that motion.

In sum, not only was the GALC not a plaintiff or party to Superior Court case no. CV1124-09, but it would be an unethical conflict of interest to represent them in light of the allegations the OAG made against the GALC in all 5 versions of the complaint it filed in that case. That is why the OAG did not consult the GALC with regard to a settlement agreement that, in part, called for the dismissal of Superior Court case no. CV1124-09, *Gov't of Guam v. Geraldine T. Gutierrez, et al.*

Best regards,

James L. Canto II
Deputy Attorney General
Litigation Division
Office of the Attorney General
590 S. Marine Corps Drive, Suite 802
Tamuning, GU 96913